United Nations S/2004/918

Security Council

Distr.: General
19 November 2004

Original: English

Letter dated 11 November 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 25 August 2004 (S/2004/683). The Counter-Terrorism Committee has received the attached fourth report from Namibia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 8 November 2004 from the Permanent Representative of Namibia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour, with reference to my letter of 19 October 2004, to submit the enclosed fourth report of the Government of the Republic of Namibia to the Counter-Terrorism Committee (see enclosure).

(*Signed*) Martin **Andjaba**
Ambassador and Permanent Representative

Enclosure

Fourth report of the Government of the Republic of Namibia to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)

1. Implementation measures

Criminalization of terrorist acts and their financing

1.1. The CTC would appreciate receiving a progress report on:

- The enactment of the Anti-Terrorism Activities Bill, (third report, page 3);
- The enactment of the Anti-Money Laundering Bill (third report, page 4);
- The ratification and implementation of the International Convention for the Suppression of the Financing of Terrorism as well as Namibia becoming party to the 11 remaining international conventions and protocols relating to terrorism contemplated in Article 3 of the Resolution, and to which Namibia has yet to become a party; (third report page 11).

Response

The Anti-Terrorism Activities Bill has been finalized and it is now with the Legal Drafters for the final preparation for tabling before Parliament. In addition, the Financial Intelligence Bill has also been finalized and it is with the Legal Drafters for scrutiny.

Anti-Money Laundering Bill, now entitled "Prevention of Organized Crime Bill" was unanimously passed by the National Assembly on 13 October 2004. The Bill has now been referred to the National Council for review, in accordance with Article 75 of the Namibian Constitution.

These Bills were submitted to the International Monetary Fund (IMF) for comments. The comments were received and incorporated in the final drafts.

On 22 April 2004, Namibia acceded to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, and has already deposited its Instrument of accession with the Secretary-General of the International Maritime Organization.

The Namibian Cabinet, on 14 September 2004 approved the tabling of the following conventions and a protocol in the National Assembly for accession:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963;

- Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970;

- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971; and

- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.

Due to the busy schedule, the National Assembly indicated that these conventions will be disposed off when the National Assembly resumed after the Presidential and National Assembly elections.

As soon as the supporting legislation are in place, namely, Anti-Terrorist Activities Bill and the Financial Intelligence Bill, other priorities and resources permitting, attention will be given to the ratification of the International Convention for the Suppression of the Financing of Terrorism and other instruments.

Effectiveness in the protection of financial systems

1.2. In regard to the effective implementation of sub-paragraph 1 (a) of the Resolution, please outline whether the Anti Money-Laundering Bill provides for the audit of financial institutions to verify compliance with the requirements to identify customers and submit suspicious transaction reports? If yes, please specify how often financial institutions will be subject to such audits? Are foreign exchange bureaux and remittance agencies also to be routinely audited?

Response

In terms of the Financial Intelligence Bill, the Bank of Namibia is empowered to conduct due diligence checks on accountable institutions as well as on supervisory bodies at any given time. Under the same bill, foreign exchange bureaux and other remittance agencies are also to be routinely inspected.

1.3 Effective implementation of sub-paragraph 1 (a) of the Resolution requires States to impose an obligation on banks, financial institutions and non-banking institutions to keep originator information on persons and institutions with which they deal. Namibia states in its third report (at page 5) that non-banking institutions are not required to keep originator information on persons or institutions with whom they deal. The CTC would be grateful to know the steps that Namibia intends to take in order to impose the obligation on non-banking institutions to keep originator information on persons and institutions with which they deal.

Response

Under the provisions of the Financing Intelligence Bill, all accountable institutions (i.e. banki institutions and non-banking institutions) are obliged to keep records of business relationship and transactions with clients for at least five years from the date on which such transaction has been concluded.

1.4 With regard to the effective implementation of paragraph 1 of the Resolution the CTC would be grateful for an outline of the legal provisions and monitoring mechanisms in place in Namibia that ensure that funds collected by organizations which have, or claim to have charitable, social or cultural goals, are not diverted to purposes other than their stated purposes, in particular to the financing of terrorism. In the absence of such provisions and mechanisms, could Namibia indicate the steps that it intends on taking in order to meet fully this aspect of the Resolution. In the same context, are there procedures in place that enable Namibian authorities to respond to requests from foreign governments to investigate specific organizations that are suspected of being linked to terrorism? If so, the CTC would appreciate receiving an outline of these procedures. In their absence, please indicate whether there are plans to institute such procedures.

Response

By legislation, charitable organizations are obliged to register with the Ministry of Health and Social Services. They must hand in audited financial reports at the end of every financial year as well as copies of minutes of their Annual General Meeting. The Ministry also conduct regular inspections to ensure that these organizations do what they are suppose to do in terms of their stated purposes with the Ministry.

In the event that, such charitable, social or cultural organizations intends to transfer money abroad, prior approval by the Exchange Control Division is required, since all money transfers abroad are subject to an authorization process and must be reported daily in terms of the Foreign Exchange Transactions Reporting System. It is one of the mandatory requirements of the Foreign Exchange Transactions Reporting System to state for what purposes and to whom the funds are being transferred.

By the terms of the Anti-Terrorism Activities Bill the Namibian Policy may on the request made by the foreign government disclosed to that government any information in the possession of the Namibia Government/department/agency which relate to suspicious of terrorist activities.

1.5 In the context of the effective implementation of paragraph 1 of the Resolution, the CTC would be grateful to know if Namibia has adopted measures to prevent terrorists and other criminals from having unfettered access to wire transfers for moving their funds. The CTC is particularly interested in measures relating to:

- Monitoring of the compliance of financial institutions with rules and regulations governing wire transfers (cross-border and domestic);

- Detecting such misuse when it occurs, in particular by ensuring that basic information on the originator of wire transfers is immediately available to relevant authorities?

Response

In terms of the Determination on Money Laundering and "Know your Customer Policy,"(BID) banking institutions are required, when effecting funds transfer, to ensure that the names, addresses and account numbers of both the ordering customers and the beneficiary are identified. The name of the banking institutions acting for the ordering customers should also be identified. In addition to this, see Namibia's response as reflected on page 4 of the Security Council Document S/2003/494 containing Namibia's third report.

The Financial Intelligence Bill in section 20 deals with electronic transfers of money to or from Namibia.

1.6 In relation to money laundering and the financing of terrorism, the CTC would be grateful for an outline of any special strategy that Namibia may have developed to enable its investigative agencies effectively to prevent resources from being transferred to terrorists (e.g. the under-invoicing of exports and over-invoicing of imports; the manipulation of high value goods like gold, diamonds, etc.).

Response

In terms of the provisions of the Minerals (Prospecting and Mining) Act of 1992 (Act No. 33 of 1992), the Ministry of Mines and Energy is the custodian of Namibia's rich endowment of mineral resources. All activities related to mineral production and exports are regulated under sections 45 (1) (c) "production" and 127 (1) (a) "export" of Act No. 33 of 1992. All gold bullion produced is exported to a well established Gold-house in South Africa based on the London Metals Exchange (LME) daily gold price. There is only one producer and one buyer of this mineral commodity. The producer and the buyer are tied up by contractual obligation. Therefore the chance of under-invoicing export of Namibian gold bullion is extremely unlikely to happen. Effective mechanisms of protecting Namibia's strategic and high value minerals are in place.

Namibia being a signatory to the Kimberly Certification Process of rough diamonds has ensured that diamond security remains tight. In fact, as the diamonds are recovered up until they are valued by the officially appointed (through tender process) Government Diamond Valuator, they remain under strict security. After valuation diamonds are sealed in parcels and issued with Kimberly Process Certificate and export permit, which indicate the number of stones, carats, and the corresponding value in Namibia dollars. The Kimberly Process Certificate and the export permit values (number of stones, carats and

price) must be the same. Furthermore, the destination must be the same on both documents with the mode of transport clearly specified.

The Kimberly Process Certificate are specially designed and printed against tempering and only three senior officials in the Ministry of Mines and Energy are authorized to sign. It is extremely difficult to under-invoice diamond exported from Namibia because the values on both the Kimberly Process Certificate and the export permit are those of the Government Diamond Valuator and the seller must present the two documents at the time of handing over the goods to the buyer. Goods imported to Namibia and particularly diamonds designated for cutting and polishing factories, are required to be accompanied by a Certificate of origin. Upon arrival in Namibia diamonds are inspected and weighed to confirm the figures on the certificate. All the rough stones are then entered in the register at the factory. Registers are inspected at very regular intervals to check the mass balances. Diamonds found not to correspond to the certificate of origin are confiscated immediately in accordance with the provisions of the Diamond Act and the accompanying regulations. For all other high value goods, similar procedures are followed, both at entry and exit.

So far there is no record that links Namibia's natural resources to money laundering or terrorist organizations.

Effectiveness of counter-terrorism

1.7. In the context of the effective implementation of sub-paragraph 2 (e) of the Resolution, the CTC would appreciate knowing which special investigative techniques may be used in Namibia in relation to terrorism (e.g. interception of communications; electronic surveillance; observation; undercover operations; controlled delivery; "pseudo-purchases" or other "pseudo-offences"; anonymous informants; cross-border pursuits, bugging in private or public premises etc.). Please outline what these techniques consist of, as well as the legal conditions that govern their use. The CTC is also interested in learning details such as: whether the use of these techniques is restricted to actual suspects; whether they may only be utilized with the prior approval of a court; whether there is a limit to the time-period in which they may be used. Could Namibia further indicate whether, and if so how these techniques could be used in cooperation with another State?

Response

Clause 43 of the Anti-Terrorism Bill makes provisions for the interception of communications after an order for such interception has been given by a judge. Interception of communications can only be done in accordance with the necessary legislation. Otherwise it may be a violation of Article 13 (1) of the Namibian Constitution.

Special investigation techniques will only be developed when the necessary legislation to criminalize terrorist activities is in place. The techniques could be used in cooperation with another state if it is allowed by legislation.

1.8 With a view to bringing terrorists and their supporters to justice, the CTC would be grateful to know whether Namibia has taken measures to protect vulnerable targets involved in the prosecution of terrorist crimes (e.g. the protection of: victims; persons collaborating in the pursuit of justice; witnesses; judges and prosecutors). Please describe the legal and administrative provisions put in place to ensure the protection of such persons. Could Namibia also indicate whether, and if so how these measures could be utilized in cooperation with, or at the request of another State?

Response

There is no protection programme in Namibia. The protection of international protected persons and their property is covered by the provisions of clauses 23 and 25 of the Anti-Terrorism Activities Bill.

1.9 Within the context of the implementation of sub-paragraph 2 (e) of the Resolution, the CTC would be grateful to know how Namibia ensures that there is adequate cooperation and information sharing among the various government agencies that may be involved in investigating the financing of terrorism, as well as with other competent authorities. With regard to the implementation of sub-paragraph 3 (d) of the Resolution, could Namibia please provide the CTC with an outline of its policies, if any, for sharing relevant information with other States, concerning suspicious transactions or other matters pertaining to the financing of terrorism?

Response

The Bank of Namibia in terms of section 46 of the Bank of Namibia Act, 1997 (Act No 15 of 1997) is the Agent for the Government in the administration of the Exchange Control Regulations, and any return, statement, account or any information submitted to the Bank of Namibia shall, in terms of section 46 (2), be transmitted to the Minister of Finance.

Under the provisions of the Financial Intelligence Bill, the officers from these following agencies, namely, Prosecutor-General, National Intelligence Service, and Police, are authorized officers who may in tantum with the Bank of Namibia (as the main agency) investigate and share information on Anti-Money Laundering and Combating Financing Terrorism AML/CFT. The Bill also provides for a National Council on AML/CFT, which will advice, and share information on AML/CFT. The Council will consist of officials from the Private and public sectors.

Except for the possible exchange of information as envisaged in the Bilateral Agreement with South Africa, the Multilateral Monetary Agreement and in terms of Article VIII,

section 2 (b) of the International Monetary Fund's Article of Agreement, Namibia does not share information as outlined in sub-paragraph 3 (d) of the Resolution.

The Anti-Terrorist Activities Bill and the Financial Intelligence Bill do provide for sharing of information with other States. This is in keeping with 40+8 FATF Recommendations.

Effectiveness of customs, immigration and border controls

1.10 Implementation of paragraphs 1 and 2 of the Resolution requires the operation of effective customs and border controls with a view to preventing and suppressing the financing of terrorist activities. Does Namibia impose controls on the cross-border movements of cash, negotiable instruments, precious stones and metals (for example, by imposing an obligation to make a declaration or to obtain prior authorization before any such movements take place)? Please also provide information concerning any relevant monetary or financial thresholds.

Response

The Customs & Excise Act, 1998 (Act No. 20 of 1998) requires such declaration to be made to the relevant authorities. The Financial Intelligence Bill obliges anyone who is leaving or entering Namibia with an exceeding amount in cash, negotiable instruments or both to declare such exceeding amount to the Bank of Namibia in such form as the Bank may specify. Regulations regarding financial thresholds will be adopted once the Bill has been promulgated.

Effectiveness of controls preventing access to weapons by terrorists

1.11 Sub-paragraph 2 (a) of the Resolution requires each Member State, *inter alia*, to have in place appropriate mechanisms to deny terrorists access to weapons. With regard to this requirement of the Resolution, as well as to the provisions of the Convention on the Marking of Plastic Explosives for the purpose of Detection and the International Convention for the Suppression of Terrorist Bombings, please provide the CTC with information relevant to the followings questions:

A) Legislation, regulations, administrative procedures

- What national administrative procedures exist to exercise effective control over production of firearms, ammunition and explosives in the following areas:

Small and light weapons

Other firearms, their parts and components and ammunition;

Plastic explosives;

Other explosives and their precursors?

- What national measures exist to prevent the manufacture, stockpiling, transfer and possession of unmarked or inadequately marked:

Small and light weapons

Other firearms, their parts and components and ammunition;

Plastic explosives;

Other explosives and their precursors?

Response

Namibia is not yet a party to the two conventions mentioned in this paragraph above. Namibia does not produce fire arms, explosives and ammunition. In its response to the Counter-Terrorism Committee's comment as reflected on page 6 of the Security Council Document S/2004/130, Namibia attached on its third report to the CTC, a copy of Arms and Ammunition Act, 1996, which regulates the import and export of arms and ammunition, manufacture of arms and ammunition.

Explosives are controlled by the Explosives Act, 1956 (Act 26 of 1956) and the Regulations made under the Act. By legislation, explosives can only be produced if a licence has been issued by the Chief Inspector of Explosives.

B) Export control

- Please describe the system of export and import licensing or authorization, as well as measures on international transit used by Namibia for the transfer of:

Plastic explosives;

Other explosives and their precursors.

- Please specify what export control procedures and other existing mechanisms are in place for the purpose of exchanging information on the sources, routs and methods used by traders in firearms.

- Do Namibia's procedures allow for the lodging and registering or checking of the Goods declaration and supporting documents relating to firearms prior to the import, export or transit of these goods? Does Namibia encourage importers, exporters or third parties to provide information to Customs prior to their shipment? Please also outline any appropriate mechanisms to verify the authenticity of licensing or authorizing documents for the import, export or transit of firearms.

- Has the Customs Service of Namibia implemented intelligence-based risk management of borders to identify high-risk goods? Please outline what data and considerations are used by the Customs Administrations to identify high-risk consignments prior to shipment.

Response

No explosives of commercial or military nature are manufactured in Namibia. Only explosives marked and packed by the manufacturer can be imported into Namibia by a registered and licensed user or dealer in explosives against an import permit or a transport permit issued by the office of the Chief Inspector of Explosives.

Chief Inspector of Explosives is responsible for the administration and enforcement of the Explosives Act, 1956 and the Regulations which control the authorization, classification, manufacturing, importation, exportation, sale, transport, possession, use and destruction of explosives. A system of licenses and permits supported by inspections is used to enforce the Act.

Plastic explosives imported in the country are marked in accordance with UN requirements. When explosives are imported, it is accompanied by the original invoice and import permit. Temporary exports (transit) are covered by an export permit which is controlled by customs at the border.

C) Brokering

- Do Namibia's laws require the disclosure of the names and locations of brokers involved in transactions concerning firearms or explosives, on the import and export licenses or authorizations, or on any of the accompanying documents?

- Do existing legal provisions allow for the sharing of relevant information with foreign counterparts in order to enable cross-border cooperation in preventing illegal shipments of firearms, their parts and components and ammunition, as well as explosives and their precursors?

Response

The Arms and Ammunition Act, 1996 does not make provision for brokering. Information regarding the illegal shipment of firearms, their parts and components, ammunition and explosives are shared with neighboring countries as an ongoing process of crime prevention.

D) Stockpile management and security

- Please outline legal provisions and administrative procedures in Namibia that provide for the security of firearms, their parts and components, ammunition as well

as explosives and their precursors, at the time of manufacture, import, export and transit through its territory.

- Has Namibia implemented, using risk assessment principles, any special security measures on the import, export and transit of firearms, such as conducting security checks on the temporary storage, warehousing and transport of firearms? Does the Namibia's laws required persons involved in these operations to undergo security vetting? If yes, please give details.

Response

Stockpile management is regulated by the Arms and Ammunition Act, 1996. The Explosives Act, 1956, among others, ensures that when importation takes place the importer is properly registered and place of storage adhered to the prescribed requirements. Only a proper licenced person is allowed to import firearms or explosives.

E) Law enforcement/ illegal trafficking

- What special measures are used by Namibia to prevent and suppress illegal trafficking in firearms, ammunition and explosives that may be utilized by terrorists?

- Do Namibia's law enforcement agencies cooperate with the INTERPOL system of tracking in firearms and explosives?

Response

Apart from the two acts mentioned above, no special measures are used in this regard.

Yes, Namibia's law enforcement agencies cooperate with the INTERPOL system of tracking in firearms and explosives.

F) National point of contact

Does Namibia have a national point of contact to act as liaison with other States on matters relating to the prevention of access to weapons by terrorists? If so, please give details.

Response

Namibia has established a National Focal Point (NFP) on small arms and light weapons. The aim of this body is to control illicit trafficking and illicit manufacturing of small arms and light weapons. The lead agency of the NFP is the Namibian Police.

2. Assistance and Guidance

Response

Assistance will be requested, when required.